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HEALTH AND SAFETY COMMISSION

Proposed Consultation on the Revision of the Construction (Design and Management) Regulations 1994 and the Construction (Health, Safety and Welfare) Regulations 1996

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Cleared by Jonathan Rees on 15 February 2005

Issue

1. At the Commission's request, and as part of its wider programme of engagement with industry, HSE has explored the need to revise the Construction (Design and Management) Regulations (CDM) 1994 and the Construction (Health, Safety and Welfare) Regulations 1996 (CHSW), which implemented the Temporary or Mobile Construction Sites Directive (TMCS) (1992/57/EEC). This paper seeks agreement to publication of a Consultative Document (CD) on proposals for revised Regulations which, as well as helping industry by simplifying and clarifying the law, will raise health and safety standards through improved planning and management of construction projects.

Timing

2. CD to be published in April; report to HSC in October; and new Regulations in October 2006.

Recommendation

3. That the Commission:

- a) approves the approach on key issues set out in paragraphs 9 and 10 and Annex A
- b) agrees to publication of the attached CD (Annex B)
- c) approves the consultation list (Annex C)
- d) notes the consultation arrangements (Annex D)

Background

4. On 16 September 2003 (paper HSC/03/93), the Commission agreed to develop, in consultation with stakeholders, consultative proposals for the revision of the CDM and CHSW Regulations. HSC/E felt that, to make real progress in changing attitudes and raising health and safety standards in the industry, there was a fundamental need to address the widespread false perception that the CDM Regulations consist of bureaucratic paperwork requirements. Also, attention needed to be focused on the practical management of health and safety and integrating it into the normal management of construction projects. The Commission agreed high-level objectives for the revision, focusing on improving the management of risk by:

- a) simplifying the Regulations to improve clarity and so making it easier for duty holders to know what is expected of them;
- b) maximising their flexibility to fit with the vast range of contractual arrangements;
- c) making their focus planning and management, rather than *the plan* and other paperwork, to emphasise active management and minimise bureaucracy;

- d) strengthening the requirements regarding co-ordination and co-operation, particularly between designers and contractors, to encourage more integration;
- e) simplifying the assessment of organisations' competence.

Argument

5. In line with these principles, and following detailed consultation with a Construction Industry Advisory Committee (CONIAC) Working Group, HSE has developed proposals for a regulatory package (Annex B). The proposals build on CDM's general principles, experience of implementation, responses to the 2002 Discussion Document (DD) *Revitalising health and safety in construction* and other feedback from industry. They move responsibility for risk to those best placed to manage it.
6. Most responsible clients recognise the importance of their influential role in engaging with designers and contractors, and the resulting business benefits, e.g. projects completed on time, within budget and with improved quality and profitability, as well as improved health and safety. The proposals will not mean any significant change for them. Responses to the DD indicated that we have been less successful in communicating the importance of the client's role more widely and in promoting the benefits they can gain from effective project management arrangements. The duties placed on clients by the proposals reflect this.
7. The proposals also strengthen and clarify the existing law in several other ways:
- a) a new role of Co-ordinator, to replace the Planning Supervisor, to advise and support clients;
 - b) a new duty on all appointees to undertake work only if they are competent;
 - c) clearer requirements on designers; and
 - d) an explicit requirement to plan and manage construction work.
8. In developing the proposals, HSE revisited the TMCS Directive's requirements, and carefully considered how implementation could best be carried forwards – in line with UK Government policy on implementation of Directives and Better Regulation. CONIAC and HSE believe that the new Regulations effectively address health and safety issues appropriate to the contracting structure of UK construction. The proposals raise some specific issues, set out in paragraphs 9, 10 & Annex A.

ACoP and/or Guidance in the CD

9. Given the nature of the construction industry, the Regulations need to be underpinned with clear guidance. Currently, the main publication is a mixture of ACoP and ordinary guidance. CONIAC would prefer to retain this mix because of the persuasive legal status of ACoP. HSE believes that, with clearer Regulations, an ACoP provides no significant enforcement advantage and tends to lead people to focus on the ACoP material, to the exclusion of the equally important guidance. The mix also causes confusion. To aid compliance, we want to establish the best way to communicate what people need to do. We therefore propose to present the supporting material as guidance only in the CD, so that consultees can compare this with the current format; and explicitly to invite their views as to which format is clearer. Some CONIAC members would prefer that we did not do this.

Demolition

10. The Trade Unions have long expressed the view that all demolition projects should be made notifiable, and we have given this careful consideration. HSE shares the concern that demolition and, indeed, other high-risk activities are properly planned and managed, and so raised the issue in the 2002 Discussion Document. We believe that mandatory notification of all demolition projects could offer the industry a false sense of security, and HSE would not be in a position to make use of additional notifications without additional (or diverted) resources. We believe the draft requirements on planning, management and competence, together with a new explicit duty to record the

arrangements for carrying out demolition and dismantling in writing, address the key issues. Projects involving substantial demolition would continue to be notifiable under the proposals.

Consultation

11. We have consulted widely informally, inside HSE, with the industry and LACoRS. The draft proposals have received general support, and the trade press has maintained a high level of interest. There has been ongoing formal consultation with CONIAC, which discussed the proposals on 18 November 2004, and commends them to the Commission. Further details are given in Annex D.

Presentation

12. HSE's Construction Programme engages with key stakeholders to encourage and support a cultural change in the industry. The CDM revision is an integral element of that engagement. It has stimulated an ongoing debate in the industry and this will continue through the consultation process. This debate is, in itself, helpful because it provides opportunities and platforms to further this engagement and communicate key messages – not least that whilst we are changing the Regulations in response to the views of stakeholders, the key to improvement is changes in attitudes and culture. We are developing a joint launch programme with the industry, before publication of the final package, to communicate the key changes and messages, and raise awareness. We expect Ministerial interest in the proposals, and although the CD was not launched at the Construction Summit on 24 February, information about it was provided to delegates.

Costs and Benefits

13. The revised package aims to improve health and safety by focusing the industry's resources on the key issues and discouraging unnecessary bureaucracy. We expect some increase in the cost of managing projects, but expect this to be outweighed by reduced injuries and ill health, less proliferation of unnecessary paperwork, simpler competence assessment, and by the financial benefits of better-run projects. This is explained in the Regulatory Impact Assessment (RIA), which has been scrutinised by the Cabinet Office Regulatory Impact Unit (CORIU) and cleared by the Ministerial Panel for Regulatory Accountability (PRA).

Financial/Resource Implications for HSE

14. Costs to HSE arising from the proposals are estimated at around £340-360k. This includes development and launch costs, training of inspectors and evaluation. We do not envisage any long-term need for additional resources from the proposals as currently drafted.

Environmental Implications

15. The proposals fit well with the Government's sustainable development strategy, as the CDM approach involves addressing health and safety issues at the design stage, which tends to reduce whole life cycle costs. Better project planning and management should also reduce waste.

Action

16. Subject to the Commission's approval, HSE will publish the CD in April 2005, with a 4 months consultation period, because of the wide-ranging interest in CDM.